

1  
2  
3  
4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 UNITED STATES OF AMERICA,

Case No. 2:20-CR-19 JCM (NJK)

8 Plaintiff(s),

ORDER

9 v.

10 BARRY ALLEN GABELMAN,

11 Defendant(s).

12  
13 Presently before the court is Barry Allen Gabelman's ("defendant") motion for  
14 reconsideration. (ECF No. 35). The government filed a response. (ECF No. 41). Defendant did  
15 not file a reply, and the time to do so has passed.

16 Defendant concedes that "[a] motion for reconsideration may be granted in three  
17 situations: (1) when there is newly discovered evidence; (2) when the court has committed clear  
18 error; and (3) when there is an intervening change in the controlling law." (ECF No. 36 at 3  
19 (citing *89 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999)). But defendant does  
20 not present any newly discovered evidence, does not argue that the court committed clear error,  
21 and does not point to any intervening change in controlling law.

22 Instead, the entirety of defendant's motion is predicated on the recent spread of the novel  
23 strain of coronavirus, COVID-19. (*See generally* ECF No. 36). The court notes that regardless  
24 of where defendant is housed—whether that be Southern Nevada Detention Center ("SNDC") or  
25 a halfway house—defendant is at risk of contracting COVID-19.

26 The government further highlights the risk COVID-19 poses to defendant if he is released  
27 to a halfway house, where "residents of the halfway house are able to leave the facility and go  
28 into the community and return to the halfway house . . . ." (ECF No. 41 at 10). Conversely, the

1 government notes that there has been no COVID-19 cases in SNDC and further explains the  
2 measures that SNDC has taken to prevent the spread of COVID-19. *Id.* at 7–8. As the  
3 government argues, defendant’s request rests on “a purely speculative argument about the  
4 conditions at the Detention Center that would be equally applicable to *every other inmate housed*  
5 *in that facility.*” *Id.* at 9 (emphasis in original).

6 Defendant does not reply to rebut any of these points. As a result, the court finds no  
7 reason to once again reconsider his detention.

8 Accordingly,

9 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant’s emergency  
10 motion to reconsider (ECF No. 35) be, and the same hereby is, DENIED.

11 DATED April 10, 2020.

12   
UNITED STATES DISTRICT JUDGE